

MINUTES

August 3, 2023

1:30 p.m.

An official recording of the Kent County Planning Commission meeting is available for viewing in its entirety on the County's YouTube channel: Kent County Government (<https://www.youtube.com/watch?v=WKcIXPSDWzk>).

The Kent County Planning Commission met in regular session on Thursday, August 3, 2023, at 1:30 p.m. in the County Commissioners' Hearing Room at 400 High Street, Chestertown, Maryland. The following members were in attendance: Chair F. Joseph Hickman, Vice Chair Paul Ruge, Ray Strong, Paula Reeder, and William Crowding. Cynthia L. McCann, Esquire, Planning Commission Attorney, was in attendance. Staff in attendance were Carla Gerber, AICP, Deputy Director; Mark Carper, LEED Green Associate, Associate Planner; and Campbell Safian, Planning Specialist.

Chair Hickman called the meeting to order at 1:30 p.m.

MINUTES

Mr. Ruge moved to approve the minutes of July 6, 2023, as presented. Ms. Reeder seconded the motion. The motion passed unanimously 5-0.

PUBLIC HEARING

*23-40 Sandra Donnelly – Zoning Text Amendment – Seasonal Outdoor Retreat
Recommendation to the County Commissioners*

Sandra Donnelly proposes to add "outdoor retreat" as a special exception use in the Agricultural Zoning District (AZD), Rural Character (RC), Rural Residential (RR), Community Residential (CR), and Village (V) districts. Revised language was submitted by the applicant's counsel, Lance Young, Esquire, in order to address issues raised by the Planning Commission at its meeting on July 6, 2023.

The proposed amendment would add a new use to the Land Use Ordinance.

The proposed definition for an outdoor retreat is "a lot, tract, or parcel of land containing up to fifteen guest units, designed for and utilized for periodic, transient occupancy and not as a permanent residence, and which may contain outdoor recreational accommodations, dining facilities for guests, and bathroom accommodations for guests."

Staff recommends sending a favorable recommendation in general regarding the revised zoning text amendment to the Kent County Commissioners with an unfavorable recommendation regarding including Village in the list of zoning districts where an outdoor retreat may be considered and also clarifying that the special exception would be reviewed by both the Planning Commission and the Boards of Appeals.

The Planning Commission heard from Rebecca Guay, Esquire, with MacLeod Law Group, LLC, on behalf of Sandra Donnelly, and Sandra Donnelly, the applicant.

Adopted on September 7, 2023

The following members of the public spoke in opposition to the Zoning Text Amendment as presented: Janet Christensen-Lewis and Judy Gifford.

Discussion ensued regarding the review process for outdoor recreational accommodations and events that may be proposed by future applicants who are seeking a special exception for an outdoor retreat.

Ms. Gerber noted that the Board of Appeals may place conditions or restrictions on events as a part of a special exception approval. The Planning Commission's approval of a site plan is also a requirement of special exception approval. The Agricultural Zoning District (AZD) allows for temporary recreational uses through the approval of a use permit. Obtaining a use permit would authorize temporary recreational uses or events that are not proposed during the special exception process.

Ms. Reeder moved to close the public hearing. Mr. Ruge seconded the motion, and the motion passed unanimously, 5-0.

Mr. Crowding moved to send a favorable recommendation to the County Commissioners for the Zoning Text Amendment to add Outdoor Retreat as a special exception use in the Agricultural Zoning District (AZD), Rural Character (RC), Rural Residential (RR) and Community Residential (CR) districts with the following changes: the Village district be removed from the text amendment; Article VII a. which reads "the project shall collectively consist of at least ten acres" shall be changed to "the project shall consist of a parcel of at least ten acres"; Article VII h. which reads "accessory uses and structures shall be setback a minimum of 25 feet from any adjacent property line" shall be changed to "all new accessory uses and outdoor retreat structures shall be setback a minimum of 100 feet from any adjacent property line"; Article VII i. which reads "the Planning Director may require a site plan and place conditions or restrictions on events as may be appropriate to assure the compatibility of the use within a district or location" shall be changed to "the Planning Commission and Board of Appeals shall place conditions or restrictions on events as may be appropriate to assure the compatibility of the use within a district or location."

Mr. Strong seconded the motion, and the motion passed, 4-1.

APPLICATIONS FOR REVIEW

*22-17 William and Valerie Ashmore – Major Site Plan – Extension of Approval
Map 55, Parcel 128, Lot 1 – Fifth Election District – Marine (M)*

Mr. and Mrs. Ashmore are requesting an extension of final site plan approval for the construction of a private destination/residence club with three guest suites and one owner's suite. The property is located on the southeast corner of the intersection of Skinners Neck Road and Kelleys Park Road near Rock Hall.

Final site plan approval was granted in July 2022. The applicants have not moved forward with the project and are seeking an extension of final site plan approval. The Land Use Ordinance states "when the applicant can show that the project is in the process of obtaining permits from a state, local or federal agency and that these permits have been pursued diligently, the Planning Commission shall grant a 12-month extension."

Correspondence was received from two neighboring property owners, who spoke against the extension of final site plan approval.

The Planning Commission heard from William Ashmore, the applicant. Mr. Ashmore indicated they have consulted with the builder; however, they have been unable to proceed with the project due to economic conditions, on-going labor shortages, and supply chain constraints. The Ashmore's intend to begin the project next summer.

Ms. Reeder asked for the definition of a private destination/residence club.

A private destination/residence club is defined as "tourist accommodations in one or more buildings owned, co-owned, or operated by a corporation, association, person, or persons, and serving as the temporary abode of persons having a residence elsewhere and offering both pre- and post-arrival concierge service. The use and occupancy of the units circulates among individuals on a periodically recurring basis and is inherently transient."

Mr. Ruge moved to grant the one-year extension, conditioned upon the staff recommendations of submitting all required sureties for stormwater management, sediment and erosion control, landscaping, and recordation of the slip agreement prior to building permit issuance.

Mr. Ruge amended his motion to include the reasons for granting the extension, which were supply chain issues and labor shortages.

Mr. Crowding seconded the motion, and the motion passed unanimously, 5-0.

*23-34 Morgnec Road Solar, LLC – Major Site Plan (Concept)
Map 37, Parcel 40 and 174 – Fourth Election District – Intense Village (IV), Community Residential (CR), Rural Residential (RR), and Resource Conservation District (RCD)*

Morgnec Road Solar, LLC, is requesting concept site plan review of a 245-acre utility-scale solar energy system. The proposed site is located at 616 Morgnec Road near Chestertown.

The project site is currently in agricultural production and is adjacent to low density residential, industrial, commercial, and critical area zoning districts. The topography is gently rolling with a few areas of drainage with steep slopes. The anticipated output is 45 to 55 MW. The solar array is to be installed on a pile-driven post-supported racking system that will allow the panels to pivot and track the sun. Grid interconnection is to be at the Delmarva Power Chestertown Substation directly across Morgnec Road. A perimeter landscaping buffer is required to screen the fenced facility, and, once in operation, traffic to and from the site will be minimal.

Mr. Carper presented the staff report.

The Planning Commission heard from Joseph Stevens, Esquire, with the Law Offices of Stevens Palmer, LLC; Nathan Hoxter, PLA, with Lane Engineering, LLC; and Kevin Clark with Urban Grid, on behalf of Morgnec Road Solar, LLC.

Mr. Stevens stated that the Public Service Commission has the authority to approve and site the location of utility-scale solar energy systems. Morgnec Road Solar, LLC, has received the Certificate of Public Convenience and Necessity (CPCN). The CPCN conditions and the Kent County Land Use Ordinance's standards for utility-scale solar energy systems must be met.

Mr. Hoxter presented the landscaping plan.

The applicants requested that the Planning Commission waive the requirement for a 3-foot perimeter landscaping berm. The Planning Commission inquired about the landscaping plan, including the positives and negatives of a landscaping berm.

Mr. Hoxter opined that the natural drainage of the site could be negatively affected if a berm is created in particular areas of the site.

Mr. Ruge expressed concerns about the location of the proposed site, noting its importance to the residential growth around the Town of Chestertown and the zoning of the site.

The following members of the public provided testimony to the Morgnec Road Solar, LLC, Major Site Plan: Janet Christensen-Lewis, Doug West, Thomas O'Neill, Salley Shea.

When asked, Mr. Clark noted that construction of the site may take up to approximately 24 months from start to finish.

23-32 Choptank Electric Cooperative Inc. – Major Site Plan (Preliminary)

*23-48 Choptank Electric Cooperative Inc. – Lot Line Adjustment – Front Yard Setback
Map 16, Parcel 61 – First Election District – Employment Center (EC)*

Choptank Electric Cooperative is requesting preliminary site plan review to expand an existing utility substation, which is to include a new 30-foot by 12-foot control building, new transformer, substation structure, and substation regulators. There is to be an addition of 38,756 square feet of gravel to the area. There is one entry into the existing facility, and two additional entrances into the area of expansion are proposed.

The applicant is requesting that the 100-foot front setback be reduced so that the substation equipment may be reconfigured to increase the spacing between energized equipment for safety as well as ease of operation.

Mr. Carper presented the staff report, recommending approval with conditions.

The Planning Commission heard from Michael Noh, PLS, and Robert Beadle, PE, with RGrid Power, PLLC, on behalf of Choptank Electric Cooperative Inc.

Mr. Noh reported that Maryland Department of Transportation (MDOT) State Highway Administration (SHA) applications for new entrances to properties on Massey Road are to be submitted by the County initially.

Mr. Ruge expressed the idea of one additional entrance instead of two, allowing for ingress and egress from the site.

Mr. Noh stated two additional entrances are needed during the construction of the station, the delivery of the substation transformer, in the event of an emergency, or if the transformer needs to be replaced.

Mr. Crowding moved to grant preliminary approval for Choptank Electric Cooperative to expand an existing utility substation on 12305 Massey Road. Approval is recommended for more than one entrance, the reduction of the 100-foot front setback, and preliminary approval of the Lot line adjustment. Final approval will be subject to Maryland native screening that is acceptable to Planning and Zoning; submission of a lot line adjustment plat with the requested 60-foot front yard setback; approval of sediment and erosion control and stormwater management plans; front, side, and rear elevations of all proposed structures; submission of the Citizen Participation Plan Report; and MDOT SHA approval of the proposed new entrances.

Ms. Reeder seconded the motion, and the motion passed unanimously, 5-0.

GENERAL DISCUSSION

Comprehensive Rezoning – Draft LUO Review

Ms. Gerber noted that the County Commissioners have adopted the resolution to begin the legislative process for the Comprehensive Rezoning and Land Use Ordinance (LUO) Update. The Draft Land Use Ordinance is available on the Kent County website. A hard copy is also available for review by the public at the Kent County Library in Chestertown.

Ms. Gerber provided an overview of the changes that have been proposed in the Draft LUO.

Mr. Crowding moved to request that the County Commissioners place a moratorium on all zoning text amendments until the final adoption of the new Land Use Ordinance and the new zoning maps.

Mr. Strong seconded the motion, and the motion passed, 4-1.

Discussion ensued regarding the Planning Commission's plan of action to review the Draft LUO.

Annual Report Calendar Year 2022

Ms. Gerber reported that the County issued 13 new residential permits inside of the Priority Funding Area (PFA), and 31 new residential permits outside of the PFA in the calendar year of 2022.

Mr. Crowding moved that Staff forward the 2022 Annual Report letter to the Office of the Secretary of the Maryland Department of Planning.

Mr. Strong seconded the motion, and the motion passed unanimously, 5-0.

5-Year Mid-Cycle Reporting

Staff has contacted our Maryland Department of Planning liaison to determine if the 5-Year Mid-Cycle Report is due in 2023 or 2024.

The Planning Commission discussed the plan of action to review the Comprehensive Plan. The Planning Commission decided that the review of the Draft Land Use Ordinance would take precedence over a review of the Comprehensive Plan.

STAFF REPORTS

ADJOURN

Mr. Ruge moved to adjourn the meeting. Mr. Strong seconded. The meeting adjourned at approximately 4:39 pm.

Francis J. Hickman, Chair

/s/ Campbell Safian
Campbell Safian, Planning Specialist